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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CONCERNED RESIDENTS OF HANCOCK PARK, etc., et al., Petitioners and Appellants, v. CITY OF LOS ANGELES et al., Respondents; YAVNEH HEBREW ACADEMY etc., Real Party in Interest and Respondent.	B208439 (Los Angeles County Super. Ct. No. BS106960)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel S. Pratt and Thomas R. McKnew, Judges. Affirmed.

Steptoe & Johnson, Michael F. Wright, Christian A. Jordan and Tamara McCrossen-Orr for Petitioners and Appellants.

Rockard J. Delgadillo, City Attorney, Sharon Siedorf Cardenas, Assistant City Attorney, and Timothy McWilliams, Deputy City Attorney for Respondents.

Latham & Watkins, James L. Arnone and Adrianna B. Kripke for Real Party in Interest and Respondent.

I.

INTRODUCTION

Yavneh Hebrew Academy is the grantee of a conditional use permit (CUP) to operate a religious day school for orthodox Jewish students. The CUP allowed Yavneh to hold indoor Sabbath prayer services, which are not open to the general public, as part of its religious education program. Yavneh requested permission from the City of Los Angeles' Central Area Planning Commission (CAPC or the City) to expand the hours of operation and the list of those allowed to participate in Sabbath prayer services. After the CAPC partially approved the modification request, the Concerned Residents of Hancock Park (Concerned Residents) and its three members filed a petition for writ of mandate (Code Civ. Proc., § 1094.5) challenging the CAPC's decision. The trial court denied the writ petition and Concerned Residents appeal. They raise jurisdictional and notice errors, insufficiency of the evidence, and errors under the Religious Land Use and Institutionalized Persons Act (42 U.S.C. § 2000cc (RLUIPA)), and California Environmental Quality Act (Pub. Resources Code, § 21000 et seq. (CEQA)). For reasons we explain herein, we affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

a. *Yavneh's CUP*

Yavneh is an independent co-educational day school for pre-school through middle school students, located on Third Street in the Hancock Park area of Los Angeles. For 85 years, some type of school use has occupied this location. The Whittier Law School was the immediately preceding occupier of the property. Yavneh acquired the property in 1998 and obtained a CUP to "permit the establishment and maintenance of a private school in the RD5 Zone," subject to conditions of approval. After renovating the property, Yavneh opened the school for the 1999 to 2000 academic year. It currently serves 450 students and, employs 175 faculty and staff.

Yavneh's CUP contains 36 conditions of approval to mitigate various impacts on the immediate area, and requires the school to undergo a yearly review of its compliance with the conditions of its grant, and to provide copies of its review report to the neighborhood. Of relevance to this appeal are Conditions 7 and 26. Condition 7 concerns the hours of operation. The original CUP allowed Yavneh to operate as follows:

"7(a) Monday through Friday from 7:30 a.m. to 6 p.m.; Saturday - 1 p.m. to 9:30 p.m., indoors only.

"7(b) Saturday – sunset to two hours after sunset, from November through March, for child/parent religious study.

"26(b) While it is understood that religious activities and religious education will be provided by the applicant, attendance at such events shall be limited to students enrolled in the school and their immediate families. *Religious activities and services shall not be open to the general public*. [¶] c. The property shall not be utilized for weddings, bar/bat mitzvahs, adult education programs or by outside groups." (Italics added.)

b. *The interim amendments to the CUP's conditions*.

In 2001 Yavneh sought to expand the Saturday hours in Condition 7(b) to include Saturday morning hours. The aim was to promote Yavneh's primary mission as a school by enhancing religious education and strengthening family values of its student. The Zoning Administrator denied the request because of a concern that expanding the hours might attract the public and create a functional synagogue. The CAPC reversed the Zoning Administrator's decision by allowing indoor religious study and prayer on Saturday mornings.

In 2003, neighbors complained about Yavneh's compliance with Condition 26(b). The Zoning Administrator decided, given the school's overall compliance with the CUP's conditions, to reaffirm that a full CUP application for a religious institution would be required if the property were to operate as a house of worship open to the public. (Los Angeles Municipal Code, section 12.24W(9) (LAMC).)

She also put the school on notice that opening religious services to the public is a prohibited activity and constitutes a violation of the conditions of approval of the current CUP, which could possibly result in the revocation of the existing use altogether should Yavneh not comply. Accordingly, the Zoning Administrator "clarified" in Condition 26(b) that (with additions underscored),

> 26(b) "While it is understood that religious activities and religious education will be provided by the applicant, attendance at such events shall be limited to students enrolled in the school. Religious activities and services shall not be open to the general public unless a Conditional use permit pursuant to Section 12.24-W9 of the Municipal Code is obtained to that effect."

c. *The amendments to the CUP's Conditions 7 and 26(b) at issue in this appeal*

In August 2005, Yavneh submitted a plan approval application requesting a more appropriate identification of those permitted to attend prayer and religious activities under Condition 26(b). While the CUP already permitted religious study and prayer on Saturday morning for students and their parents, Yavneh requested that Condition 26 be altered to allow families of former students, Yavneh alumni, current and former Yavneh board members, Yavneh donors, school faculty and staff, and Yavneh guest lecturers, in addition to the already permitted enrolled students, their parents, and siblings.[1] This modification, Yavneh believed, was

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[1] Yavneh's request was to modify Condition 26(b) to read (with additions underscored and deletions stricken through): "While it is understood that religious activities and religious education will be provided by the Applicant, attendance at such events shall be limited to students enrolled in the school ~~and their immediate families~~, their parents and siblings, their families, parents, siblings and families of former students, Yavneh alumni, current and former Yavneh board members, Yavneh donors, school faculty and staff, and Yavneh guest lecturers."

"entirely consistent with the evident intent of the Condition -- to prohibit attendance by the general public, while allowing for attendance by members of the 'Yavneh Family.' " Yavneh explained, although Condition 26 likely stemmed from a concern about potential traffic, parking, and noise impacts on the surrounding community, that Orthodox Jews do not drive on the Sabbath, and worship services are quiet and always indoors, and so adverse traffic, parking, or noise would not likely result from the proposed change. Yavneh cited RLUIPA, which prohibits the implementation of a land use regulation in a manner that imposes a substantial burden on religious exercise. It argued that the school, "like any religious school, should be entitled to conduct religious activities and education in the way that it reasonably sees fit so long as such activities and education do not unreasonably impact the surrounding neighborhood."

Concerned Residents and other opponents of the modification argued, among other things, that the proposed expanded list of those who could attend religious services effectively permitted Yavneh to function as a de facto public synagogue for the surrounding community. They argued that the status of those who attend would be nearly impossible to police. Opponents complained that Yavneh had already been violating the CUP by holding Bar Mitzvah ceremonies as part of its weekly Sabbath morning services. Already they claimed to have observed services being held with no students present, and submitted copies of articles and internet advertisements indicating that Yavneh had a "growing adult-education program."

Yavneh reiterated its "policy . . . that Saturday morning prayer services are not open to the general public. They are an important element of the religious education taught by our school." It denied advertising or inviting people from outside the Yavneh family to join in services. Yavneh had sent notices to parents of its students quoting from, inter alia, Condition 26 prohibiting services "open to the general public." In a meeting between the Hancock Park Homeowners Association, the Council District Office, and Yavneh, the latter affirmed that it

was a religious school that did not allow the general public to attend Saturday services.

The Zoning Administrator issued its decision in August 2006 after a public hearing, finding that Yavneh "has, for the most part, complied with the terms and conditions of the grant . . . ." However, she denied Yavneh's request to modify the list of those permitted to attend Saturday religious study in Condition 26. Noting the public's allegations that the facility was being used as a house of worship open to the general public, or a "multipurpose religious community center," not permitted in a residential zone, the Zoning Administrator found that Yavneh had been violating the use condition. As for RLUIPA, the Zoning Administrator explained that religious education properly includes the practice of religious services for educational purposes, whereas religious ceremonies such as Bar and Bat Mitzvahs and weddings are conducted in a house of worship, not at a school. It was irrelevant to the Zoning Administrator that religious services would have no negative impact on adjacent properties because a religious use beyond educational purposes was not permitted under the CUP's grant. Finding *there was no need for further clarification of Condition 26, which is aligned with the approval of a school use on the property, not a house of worship open to the general public,* the Zoning Administrator modified Yavneh's hours of operation by establishing the following for Conditions 7a, 7b, and 26(b) (with additions underscored and deletions stricken through):

7. <u>School</u>

a. Monday through Friday -- 7:30 a.m. to 6 p.m.; Saturday -- 4:30 p.m. to 9:30 p.m., indoors only.

b. <u>Modified</u>. Saturday ~~Religious Study and prayer~~ -- ~~9:00 a.m. to 12:30 p.m. indoors only~~ <u>sunset to two hours after sunset, from November through March, for child/parent religious study.</u>

26(b) <u>Modified</u>. While it is understood that religious activities and religious education will be provided by the applicant, attendance at such

events shall be strictly limited to students enrolled in the school, their parents and siblings. Religious activities ~~and services~~ shall not be open to the general public unless a Conditional Use permit pursuant to Section 12.24-W9 of the Municipal Code is obtained to that effect.

d. *Yavneh's appeal of the Zoning Administrator's ruling to the CAPC*

Yavneh filed its appeal from the Zoning Administrator's decision in August 2006. It argued that religious instruction to its students is "part of its mission" and "an essential element of Yavneh's religious program." "Religious services on the Sabbath (from Friday sundown to Saturday sundown) are a required element of the Jewish religion and are an essential part of Yavneh's religious programs," "where family involvement and close community ties are intertwined and form an essential part of the secular and religious educational process." Alumni, current and former Yavneh board members, Yavneh donors, school faculty and staff, and Yavneh guest lecturers, the school asserted, are integral components of the school community. However, Saturday morning prayers are not open to the general public. Yavneh added that "Saturday religious services are an essential exercise of religious freedom and the [Zoning Administrator's] prohibition on religious services and prayers on Saturday morning for the Yavneh community violate[d] fundamental constitutional rights" by violating RLUIPA. Yavneh found it unimaginable that the prayer services could cause any impact on the neighborhood because they attract far fewer attendees than are present on campus during the week, the services are held indoors, cannot be heard off-campus, and the congregants walk to and from the prayer services. Thus, there was no legitimate purpose behind banning those prayers, and there was no compelling governmental interest in prohibiting prayer services on Saturday.

Concerned Residents responded that the property's permitted use is for a private school, not a house of worship, and that the latter use would require a

separate CUP. Concerned Residents asserted that preventing Saturday use of the premises did not improperly violate RLUIPA whereas unconditional reinstatement of use on Saturday constituted a preferential treatment for Yavneh.

At the hearing at which proponents of both sides appeared and spoke, the Zoning Administrator stated that she had consulted with the City Attorney and decided she was not "tied to" the conditions she had originally imposed, "especially in light of" RLUIPA. The Zoning Administrator recognized that religious activities, including services, are a permitted part of the school's curriculum. Yet, secular schools are not subject to conditions regulating curriculum. For example, the City does not dictate to secular schools when they must teach geography or history. Hence, the Zoning Administrator recommended that (1) all reference to religious curriculum be deleted from the conditions; (2) the Saturday hours in Condition 7a be extended from 8:30 a.m. to 9:30 p.m.; and (3) Condition 7b ("Saturday hours from sunset to two hours after sunset, November through March for child/parent religious study") be deleted entirely.

In fact, with respect to Condition 26(b), the Zoning Administrator recommended deleting it completely because, as Concerned Residents argued, it was impossible to police the identities of the religious-service participants. The more feasible approach, she explained, would be to limit attendance by number rather than based on the type of attendees. Nonetheless, the Zoning Administrator advocated maintaining the notice to Yavneh that, should it wish to operate a house of worship, it must seek a CUP for that use.

The CAPC struggled with devising a way to limit Saturday uses to those of a school. The City Attorney explained, as written specifying the allowable activities on Saturdays, Condition 26 was unenforceable, and recommended, to achieve the goal of limiting conduct to a *school use*, that the CUP should limit Saturday activities to indoors only and impose a cap on the number of attendees at Saturday activities.

At the close of the hearing, the CAPC found that "1) [Yavneh] has, for the most part, complied with the terms and conditions of the grant; and 2) the maintenance of the existing conditions of approvals as updated and modified to reflect . . . continued monitoring of the use and compliance with required conditions of operation of the facility subject to the attached modified Conditions of Approval." The CAPC voted unanimously to grant Yavneh's appeal *in part* with modifications to Conditions 7a and 7c and the deletion of Conditions 7b and 26(b) as follows (with additions underscored and deletions stricken through):

7. School

a. Monday through ~~Friday~~ Thursday -- 7:30 a.m. to 6 p.m.; Friday -- 7:30 a.m. to 8 p.m.; Saturday -- 8:30 ~~p.m.~~ a.m. ~~4:30 p.m.~~ to 9:30 p.m., indoors only. Saturday attendance shall be limited to a maximum of 300 individuals, including students.

b. Deleted. ~~Saturday -- Religious Study and prayer – 9:00 a.m. to 12:30 p.m., indoors only. Sunset to two hours after sunset, from November through March, for child/parent religious study.~~

26(b) Deleted. ~~While it is understood that religious activities and religious education will be provided by the applicant, attendance at such events shall be strictly limited to students enrolled in the school, their parents and siblings. Religious activities and services shall not be open to the general public unless a Conditional Use permit pursuant to Section 12.24-W9 of the Municipal Code is obtained to that effect~~.

The CAPC's Letter of Decision confirmed that Yavneh was to continue submitting reports annually and to file a plan approval application to review its compliance with and the effectiveness of the conditions. The CAPC also found that the modification qualified for a CEQA Class 1 exemption.

e. *Concerned Residents' petition to the trial court for a writ of mandate*

After an unsuccessful appeal to the City Council, Concerned Residents brought a writ of mandate in the trial court. Therein, they argued that the CAPC's decision allowed Yavneh to operate a synagogue without the necessary CUP required of all other houses of worship in the City. They argued that the CAPC (1) improperly applied the RLUIPA; (2) deprived Concerned Residents of due process by failing to provide reasonable notice of the Zoning Administrator's decision to reverse her recommendations; (3) abused its discretion by ignoring unrefuted evidence that Yavneh was being used as a house of worship; (4) abused its discretion by deleting conditions designed to limit Yavneh's use of the facility as a school; and (5) failed to proceed in a manner authorized by law because the CAPC did not have jurisdiction to review changes to a school's CUP. Finally, they argued that the CAPC failed to comply with CEQA's procedural requirements. Concerned Residents asked the court to issue a writ of mandate to set aside all modifications made to the CUP; and to compel the City to (1) strictly enforce all conditions of the CUP as it existed before the CAPC modified it; (2) to ensure that Yavneh is not conducting religious services open to the general public; (3) to require future modifications be made by the proper administrative body under the LAMC; and (4) to require compliance with CEQA.

The trial court denied Concerned Residents' writ petition and Concerned Residents appealed from the final judgment denying the petition.

III.

CONTENTIONS

Concerned Residents challenge (1) the CAPC's jurisdiction; (2) adequacy of the notice of the CAPC's hearing; (3) the CAPC's findings; (4) the CAPC's decision; (5) the CAPC's reliance solely on RLUIPA; and (6) the CAPC's CEQA determination.

IV.

DISCUSSION

a. *The standard of review*

The issuance and modification of a CUP is a quasi-judicial administrative action that the trial court reviews pursuant to administrative mandamus procedures of Code of Civil Procedure section 1094.5. (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1005.) "Except in a limited class of cases involving fundamental vested rights [citation], the trial court reviews the whole administrative record to determine whether the agency's findings are supported by substantial evidence and whether the agency committed any errors of law. [Citations.]" (*Ibid.*) That is, before upholding a CUP decision, the reviewing court must "scrutinize the record and determine whether substantial evidence supports the administrative agency's findings and whether these findings support the agency's decision." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 514.)

"[O]n appeal, our function is identical to that of the trial court. [Citation.]" (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne*, *supra*, 157 Cal.App.4th at p. 1005; cf. *Mumaw v. City of Glendale* (1969) 270 Cal.App.2d 454, 459.) "In determining whether the findings are supported, '[w]e may not isolate only the evidence which supports the administrative finding and disregard other relevant evidence in the record. [Citations.] On the other hand, neither we nor the trial court may disregard or overturn the . . . finding " 'for the reason that it is considered that a contrary finding would have been equally or more reasonable.' " [Citations.]' [Citation.] [¶] In determining whether the decision is supported, we require the findings to 'bridge the analytic gap between the raw evidence and ultimate decision or order.' [Citation.] The findings need not be stated with the precision required in judicial proceedings. [Citation.] They may properly incorporate matters by reference and even omissions may sometimes be filled by such relevant references as are available in the record. [Citation.] 'Thus,

where reference to the administrative record informs the parties and reviewing courts of the theory upon which an agency has arrived at its ultimate finding and decision it has long been recognized that the decision should be upheld if the agency "in truth found those facts which as a matter of law are essential to sustain its . . . [decision]." [Citations.]' [Citation.] [¶] 'In making these determinations, the reviewing court must resolve reasonable doubts in favor of the administrative findings and decision.' [Citation.]" (*Craik v. County of Santa Cruz* (2000) 81 Cal.App.4th 880, 884-885.)

b. *Procedural matters*

1. *The Zoning Administrator and the CAPC had jurisdiction over this matter.*

Concerned Residents contend that the trial court erred in ruling that the Zoning Administrator and the CAPC had jurisdiction to modify Yavneh's CUP. They argue that LAMC section 12.24U, governing CUPs for schools, confers jurisdiction on the *City Planning Commission* with the City Council as the appellate body. (LAMC, § 12.24U(24))[2].) Where Yavneh is a school, Concerned Residents argue, the Zoning Administrator and CAPC lacked jurisdiction to review or modify Yavneh's permit for a conditional school use. (*City and County of San Francisco v. Padilla* (1972) 23 Cal.App.3d 388, 400.)

We conclude that the Zoning Administrator, and the CAPC as the appellate body, had jurisdiction in 2006 when the decision at issue was made. LAMC section 12.24U applies only to initial issuance of CUPs; it says nothing about extensions or modifications to existing CUPs. By contrast, LAMC section 12.24M concerns extensions to existing uses under CUPs. LAMC section 12.24M

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[2] LAMC section 12.24U(24) describes the following uses: "(a) Public schools, elementary and high (kindergarten through 12th grade); [¶] (b) Private schools, elementary and high (kindergarten through 12th grade) in the A, RE, RS, RI, RU, RZ, RMP, RW1, R2, RD, RW2, R3, C1, C1.5, or M Zones . . . ."

requires that plans for such modifications be "submitted to and approved by the Zoning Administrator, the Area Planning Commission, or the City Planning Commission, *whichever has jurisdiction at the time.*"[3] (Italics added.) Yavneh's CUP specified that the *Zoning Administrator* had jurisdiction. In 1998, when it first issued the CUP, in 2001 and 2003 when it modified the CUP, as well as 2006 when the Zoning Administrator made the decisions leading to this appeal, Condition 33 specified that, during the annual review of CUP compliance, the authority to modify, add, or delete conditions "*as deemed necessary*,"[4] lay with the Zoning Administrator. (Italics added.) At issue are the amendments to the CUP's conditions. According to both LAMC section 12.24M and Condition 33, the Zoning Administrator had jurisdiction at the time to modify Yavneh's existing use under its CUP. (LAMC, § 12.24M.) Where the Zoning Administrator properly had original jurisdiction, the CAPC had appellate jurisdiction. (LAMC, § 12.03 [CAPC has power to hear appeals from Zoning Administrator's determinations].)

Concerned Residents argue that LAMC section 12.24M does not apply to this case. LAMC section 12.24M concerns "any lot . . . on which a deemed-approved conditional use is permitted . . . ." Concerned Residents cite subdivision L of LAMC section 12.24[5] to assert that a "deemed-approved

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[3] LAMC section 12.24M reads in relevant part, "On any lot . . on which a deemed-approved conditional use is permitted pursuant to the provisions of this section . . . existing uses may be extended on an approved site . . . provided that plans are submitted to and approved by the Zoning Administrator, the Area Planning Commission, or the City Planning Commission, *whichever has jurisdiction at the time.*" (Italics added.)

[4] In fact, the CAPC noted the applicability of LAMC section 12.24M in its ruling stating "Sustained as modified the Zoning Administrator's decision dated August 14, 2006, pursuant to Los Angeles Municipal Code Section 12.24-M, and Condition Nos. 33 and 37. . . ."

[5] LAMC section 12.24L reads: "Any lot . . . which is being lawfully used for any of the purposes enumerated in this section at the time the property is first classified in a zone in which the use is permitted only by conditional use or at the

conditional use thus amounts to a legal non-conforming use" and that Yavneh was not a non-conforming use in 1997 when it applied for the CUP. However, a " 'nonconforming use' . . . is a use of property that was in effect prior to the enactment of the zoning ordinance." (*Tustin Heights Assn. v. Bd. of Supervisors* (1959) 170 Cal.App.2d 619, 626.) It is contrasted with a conditional use. (*Ibid.*) Yavneh's use does not predate the ordinance and so it is a conditional not a nonconforming use. Therefore, Concerned Residents are wrong to apply LAMC section 12.24L.[6]

2. *The CAPC gave adequate notice to the public of its hearing*.

The CAPC issued the following notice of the challenged hearing: "The hearing involves two appeals of certain conditions of the Zoning Administrator's Plan Approval determination, pursuant to Los Angeles Municipal Code Section 12.24-M and Condition Nos. 33 and 37 of [Yavneh's CUP], that: 1) [Yavneh] has, for the most part, complied with the terms and conditions of the grant; and 2) the maintenance of the existing conditions of approval as updated and modified to reflect continued monitoring of the use and compliance with required conditions of operation of the facility. [Yavneh] (1) has appealed: the restrictions on Saturday prayer sessions [and] the prohibition of 'religious services' as a permitted use at the school . . . ." The notice further indicated that "The [CAPC's] decision will be based on the merits of the case and the applicable law. *The Commission can consider the entire action even if only a portion has been appealed.*"

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time the use in that zone first becomes subject to the requirements of this section, shall be deemed to be approved for the conditional use and may be continued on the lot."

[6] As the result of our conclusion here, we need not address Concerned Residents' contentions that they had standing and did not waive their objections to subject matter jurisdiction.

The trial court found that the notice "clearly stated" that Yavneh was appealing from the restrictions on Saturday prayer sessions and the prohibition against religious services as a permitted use at the school. The court also observed that the notice informed readers that the CAPC could consider the entire action even if only a portion had been appealed.

Concerned Residents challenge the trial court's finding that notice was adequate. They contend, where they only learned of the Zoning Administrator's reversal of her initial decision upon their arrival at the hearing -- as opposed to the 24-day advanced notice required by LAMC sections 12.24I(3) and D(2)(b) -- that they were not given adequate notice of the issues at the CAPC hearing. Hence, Concerned Residents argue that they were denied the opportunity to prepare evidence on the effects and environmental impact of increasing the hours of operation and deleting religion-conscious restrictions.

Granting a CUP requires at a minimum, due notice and a fair hearing. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612.) "Due process principles require reasonable notice and opportunity to be heard before governmental deprivation of a significant property interest." (*Ibid.*)

"Neither the state statutes nor the local ordinance specify in particular what the contents of the required notice must be. [Citation.] Decisional law makes clear, however, that the required notice must be adequate in light of the purpose to be served. '[W]here, as here, prior notice of a potentially adverse decision is constitutionally required, that notice must, at a minimum, be reasonably calculated to afford affected persons the realistic opportunity to protect their interests. [Citations.]' [Citation.] Several cases have held that to be adequate 'the notice must be such as would according to common experience be reasonably adequate to the purpose.' [Citations.] ' "[C]ommon sense and wise public policy . . . require an opportunity for property owners to be heard before ordinances which substantially affect their property rights are adopted. . . ." ' [Citation.]" (*Drum v. Fresno County Dept. of Public Works* (1983) 144 Cal.App.3d 777, 782-783.)

Here, the notice of public hearing was adequate in light of its purpose. It plainly alerted the public to the hearing's subject and stated that it would include "the restrictions on Saturday prayer sessions [and] the prohibition of 'religious services' as a permitted use at the school." Thus, the notice informed the public that the CAPC would consider the religious and time restrictions, which logically includes within its sweep the *elimination or expansion* of restrictions on Saturday sessions and *permission for or prohibition against* religious services at the school. With this notice, Yavneh's opponents knew that the CAPC would address the very issues Concerned Residents raised before the Zoning Administrator and so they had full opportunity to protect their interests. (*Horn v. County of Ventura, supra*, 24 Cal.3d at p. 617.) More important, the notice announced that the CAPC could, as italicized in the notices, "*consider the entire action even if only a portion has been appealed,*" thereby alerting readers to the fact that the CAPC could review all uses permitted and conditions imposed in Yavneh's CUP. Accordingly, the public was notified of the possibility that the CAPC would consider additional issues *in the record*. In light of the unrestrained nature of the notice, and given the CAPC's review was based *on the record* (LAMC, § 12.24I(3),[7] Concerned Residents' contention that the notice somehow precluded them from marshalling their arguments, including the very same ones they had raised before the Zoning Administrator, is unpersuasive.

Concerned Residents' argument is really that they were surprised at the hearing because they were not given advance warning that the Zoning Administrator would revise her ruling. However, no such revision occurred. The notice of appeal to the CAPC announces that "[t]he filing of this Notice of Appeal stays all proceedings in connection with the approval until a determination is made

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[7] LAMC section 12.24I(3) reads in relevant part: "When considering an appeal from the decision of an initial decision-maker, the appellate body shall make its decision, *based on the record*, as to whether the initial decision-maker erred or abused his or her discretion." (Italics added.)

by the [CAPC]." Effectively, the statements she made during the CAPC's hearing were advisory only.

Moreover, the Zoning Administrator's comments at the hearing fell within the sweep of the CAPC's notice of hearing. The notice indicated that among the issues to be raised at the hearing would be *arguments against the Zoning Administrator's findings and determination*, because that was the notice's description of Yavneh's appeal arguments. The public was also alerted to the fact that the Zoning Administrator's specific ruling was not the sole issue the CAPC would consider. The notice stated that issues that could be raised at the hearing included the merits of the case and the law and the "*entire action even if only a portion has been appealed*." Thus, Concerned Residents were unmistakably alerted to the fact that the CAPC could review far more than merely the Zoning Administrator's findings and recommendations themselves.[8] In fact, a review of the history of this CUP clearly shows that the Zoning Administrator and the CAPC had been struggling with these same issues since 2001. Concerned Residents had been involved in the hearings into Yavneh's CUP since at least 2001 and were well versed in the contents of this record. They and their counsel were present at

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[8] Concerned Residents contend that the trial court erred as a matter of law when it stated that the CAPC was exercising its independent judgment. The court stated: "The notice of hearing clearly stated that the appellant had appealed 'the restrictions on Saturday prayer sessions [and] the prohibition of "religious services" as permitted use at the school. . . .' [Citation.] The notice also states that 'The Commission can consider the entire action even if only a portion has been appealed. . . .' Petitioners had notice that the Commission would make an independent judgment based on the record and would not be limited to findings in the [Zoning Administrator's] determination." We agree with Concerned Residents that the CAPC reviews for abuse of discretion and error. (LAMC, § 12.24I(3).) However, we think that the trial court's use of the term "independent judgment" when referring to the CAPC's review, although an unfortunate word choice, referred not to the CAPC's *standard* of review, but to the *scope of the issues* under review as being not limited to the findings of the Zoning Administrator, but including in its sweep, issues beyond those raised by Yavneh's appeal to the CAPC.

the CAPC's lengthy hearing and were given time to express their views. Concerned Residents were not denied due process.

c. *Substantive issues*

1. *The evidence supports the CAPC's findings and the findings support its decision*.

Concerned Residents contend that the CAPC abused its discretion because the evidence does not support its findings and its findings do not support its decision. They contend that "the CAPC made no findings that support extension of Yavneh's hours or removal of the use restrictions. They assert that the Zoning Administrator found, and the evidence shows, that Yavneh had a history of violating the CUP's use condition and the CAPC did not find that the Zoning Administrator abused her discretion in making that finding. Instead, the CAPC extended the school's hours of use and removed the religion-based restrictions, which decision is not supported by the findings.

To the contrary, the CAPC found that (1) Yavneh was using the property as a religious school where worship services are part of the religious education at the school; (2) Yavneh was in substantial compliance with the CUP's conditions; and (3) the modifications were consistent with a school use. Our review of the record reveals substantial evidentiary support for these findings.

2. *The evidence supports the CAPC's findings that Yavneh was using its property as a school for secular and religious education*.

At the heart of this case is Concerned Residents' insistence, by lifting the religious-conscious use restrictions in the CUP, that the CAPC allowed Yavneh to become a house of worship without obtaining a separate CUP for that purpose. The CAPC found during the hearing and in its written decision, that Yavneh was a school with religious services as part of the curriculum, "*but it is still a school*" *and understands it is expected to continue operating as a school*. (Italics added.) The record contains supporting evidence that Yavneh was operating as a school

and that "Religious services and education are an essential element of [that educational purpose]."

Turning to the question of whether Yavneh is a "school" or a "religious institution" within the meaning of the LAMC, we apply the usual rules of statutory construction. " '[W]e must ascertain the intent of the drafters so as to effectuate the purpose of the law. [Citation.] Because the statutory language is generally the most reliable indicator of legislative intent, we first examine the words themselves, giving them their usual and ordinary meaning and construing them in context.' [Citation.]" (*Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) If the language of a statute is unambiguous, the plain meaning governs and it is unnecessary to resort to extrinsic sources to determine the legislative intent. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 919.) If the statutory language does not yield a plain meaning, we may consider extrinsic evidence of intent, including the legislative history. (*Mejia v. Reed*, *supra*, at p. 663.) However, "[i]n determining the proper interpretation of a statute and the validity of an administrative regulation, the administrative agency's construction is entitled to great weight, and if there appears to be a reasonable basis for it, a court will not substitute its judgment for that of the administrative body. [Citations.]" (*Ontario Community Foundations, Inc. v. State Bd. Of Equalization* (1984) 35 Cal.3d 811, 816.)

A school is defined in the LAMC as "An institution of learning for minors, whether public or private which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education." (LAMC, § 12.70B(11).)

A "religious institution" is defined in four places in the LAMC. LAMC sections 12.70B(10) and 45.19.5B(6) define a religious institution as "A building which is used *primarily* for religious worship and related religious activities." (Italics added.) LAMC section 45.21D defines a religious institution as "[A]ny building or structure that is maintained and used *exclusively* for religious worship,

including customary *incidental, educational* and social activities in conjunction therewith." (Italics added.) Finally, the Code's Public Safety and Protection Chapter defines "Church" as "Any building or premises used as a place of assemblage for *public* worship or meditation." (LAMC, § 57.02.02, italics added.)

Applying the above-cited principles, the LAMC's language, for our purposes, is plain and unambiguous. The evidence here supports the CAPC's conclusion, even with the modifications in place, that Yavneh is a school and not a religious institution, and so it was not required to seek a separate CUP for use as a religious institution. Yavneh is a private "institution of learning for minors," that "offers instruction in those courses of study required by the California Education Code" in addition to religious education; it is not *primarily* or *exclusively* used for religious worship where educational instruction is merely incidental. (LAMC, § 12.70B(11).) The evidence shows, and no one actually disputes, that Yavneh provides secular and religious education. The testimony was that Yavneh is a religious private school and the practice of religion, including services and prayer, is expected to occur as part of the curriculum. By contrast, read together, the LAMC definitions indicate that to qualify as a "religious institution" the facility must be *primarily* or *exclusively* for religious worship, or *open to the public.* Although Yavneh's academic curriculum does include religious education and Sabbath prayer, such activities are not its *primary* or *exclusive* use. Furthermore, there was ample evidence from Yavneh that it was *not open to the public*. Even recognizing the neighbors' allegations that adult prayer occurred on the campus, there is no evidence that those adults were from the general public and not from the Yavneh community. The CAPC's construction is entitled to great weight, and we will not substitute our conclusions for that of the CAPC if there appears to be a reasonable basis for it. (*Ontario Community Foundations, Inc. v. State Bd. Of Equalization, supra,* 35 Cal.3d at p. 816.) The evidence here supports the CAPC's finding that Yavneh is a school under the LAMC, and substantiates the trial court's ruling that "[t]he city's interpretation that the campus is primarily a school

and not primarily used for religious worship is supported by substantial evidence. [Citations.]"

Citing their assertions in the record that Yavneh was allowing the general public to participate in Sabbath prayer services, Concerned Residents argue that Yavneh was using the property as a house of worship with the result that the evidence does not support the CAPC's findings that Yavneh was operating a school. We must resolve reasonable doubts in favor of the administrative findings and decision (*Topanga Assn. for a Scenic Community v. County of Los Angeles, supra*, 11 Cal.3d at p. 514), and we look for substantial evidence – even contradicted evidence – that supports the trial court's findings. (Code Civ. Proc., § 1094.5, subd. (c); *Stoddard v. Edelman* (1970) 4 Cal.App.3d 544, 551.) Apart from the fact that we do not read the evidence Concerned Residents cite to support their argument that Yavneh is using the property as a house of worship open to the general public, there was ample evidence that the school's Sabbath prayer services *were not open to the general public*. Not only has the school repeatedly insisted that it is closed to the general public, but it sent notices out to the families of students quoting from section 26's prohibition against use by the general public. Furthermore, as explained, it is undisputed that Yavneh was a school, not a house of worship. Therefore, Concerned Residents' allegations do not undermine the CAPC's oral and written findings that Yavneh was a school.

Concerned Residents effectively argue that the CAPC ignored the Zoning Administrator's findings that Yavneh violated Condition 26. But, the CAPC recognized Concerned Residents' claims and called them "allegations." It found "[w]hile [Yavneh] seems to have problems complying with this condition, no specific major impact was substantiated resulting from the use of the property on Saturday." Stated otherwise, the CAPC took note of Concerned Residents' evidence of violations of the use restrictions and found that even if true, the violations did not result in any major impact on the neighborhood or on Yavneh's use. Indeed, the only evidence concerning neighborhood impact is the testimony

and letters averring that Orthodox Jews walk on the Sabbath; they do not use cars; their activities are conducted indoors only, and they attract fewer attendees than are present at the school during the week, with the result their conduct did not have a major impact on the neighborhood. And, where no one disputes that policing the identities of attendees is nearly impossible, there is no way to document that those seen walking to prayer were from the general public.

The crux of Concerned Residents' position is that by removing the religion-based restrictions on Yavneh's ability to provide prayer services as part of its religious education to students and members of its school community, the CAPC effectively transformed the school into a house of worship. But, given the definition of "religious institution" in the LAMC as a facility that is used *primarily or exclusively* for religious worship or *public* worship (LAMC, §§ 12.70B(10); 45.19.5B(6); 45.21D & 57.02.02), the modifications to the CUP here did not achieve such an end. Rather, the modifications allowed Yavneh to provide Sabbath prayer services as part of its religious education to its students and to the school community in accord with its use as a religious *school*.

We distinguish *League of Res. Neigh. Adv. v. City of Los Angeles* (2007) 498 F.3d 1052, which Concerned Residents cites to support their contention that Yavneh can be operating both a school and a synagogue for which it must obtain two CUPs, one for each use. That case involved a *synagogue*'s attempt to secure permission to use the property as a house of worship without obtaining a CUP for that use. (*Id*. at pp. 1053-1054.) It did not involve a religious school that not only had a CUP to use the property as a school, but is found in substantial compliance with that grant. Nor did the congregation in that case dispute any findings that it was using the property as a house of worship. And the court there was never called upon to compare a school's use was that of a house of worship.

3. *The evidence supports the CAPC's finding that Yavneh was in substantial compliance with its CUP's conditions*.

In its written findings, the CAPC found that Yavneh was in "*substantial compliance*" with the CUP "with the *possible* exception of Condition No. 26." (Italics added.) This finding was based on testimony, material in the file, and field investigation. The record before the CAPC contained the Zoning Administrator's repeated findings in 2001 and 2003, that Yavneh "has generally complied with all of the terms and conditions of the grant" and "demonstrate[d] substantial compliance with all of the conditions of the grant;" and again in 2006, that Yavneh had "for the most part, complied with the terms and conditions of the grant." Even neighbors have recognized Yavneh's efforts to be a " 'good' " and "superb" neighbor, and that "[t]he severe and traumatic impact that we had [] feared from the change to a day school have not occurred, I am sure to everyone's delight, and to the credit of the Yavneh community." The CAPC also had evidence about Yavneh's compliance with traffic control, hours, parking, height and signage, and with the reporting requirements and the specification that it meet yearly with the neighbors (Conditions 32 and 33). Finally, the record contains testimony and documents attesting to the fact that Yavneh had not opened the Sabbath prayer services that it provides as part of its religious education to the general public. All of this evidence supports the CAPC's finding that "Considering the overall continued compliance of [Yavneh] on the major issues of traffic control and vehicle ridership, and the public recognition of the generally 'good neighbor' standing of [Yavneh], it can be found from this plan review that with the conditions as revised, the use of the property for a private school, at this location will continue to be desirable to the public convenience and welfare." While the CAPC recognized the *allegations* Yavneh was open to the general public for Sabbath prayer, those assertions do not undermine the CAPC's findings otherwise of substantial compliance.

4. *The evidence supports the CAPC's finding that the modifications it made in its decision were consistent with a school use.*

Reviewing the record, it shows that Yavneh is a religious private school whose curriculum includes the practice of religion. The CAPC sought to maintain limitations on the activities in the school so as to retain its character as a school. Toward that end, the CAPC expanded the hours of operation on Saturday but retained the requirement that activities could only occur indoors and capped the number of occupants, including students. Additionally, the CAPC deleted Condition 26(b) because those limits were already contained in the LAMC, which defines a religious institution as one that is used primarily or exclusively for religious worship or is open to the public for worship. Still, the CAPC warned Yavneh that if it opened its campus to the general public for worship, it would be required to obtain a CUP for that use. The evidence in support of this decision came from the City Attorney who testified that modifying Yavneh's hours, capping attendance, and limiting activities to indoors, made the CUP consistent with Yavneh's grant and its educational purposes, including its religious education, even without the restrictions on the identities of attendees or limits on what kinds of worship services the school could offer to its students. Also, in conformity with other private school CUPs, the modifications curbed the possibility of negative impact on the neighborhood. In short, evidence was sufficient to support the CAPC's decision to make the modifications it did to the CUP.

5. *The CAPC did not improperly apply RLUIPA.*

Concerned Residents contend that RLUIPA was improperly "the basis for [the] CAPC's decision." (Emphasis in original.) Reliance on RLUIPA was improper, they argue, because neither the CAPC nor the trial court made the required findings of a violation of RLUIPA to justify its modifications to the CUP and so the record does not support the CAPC's decision. Not so.

RLUIPA states: "*No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise* of a . . . religious . . . institution, unless the government demonstrates that imposition of the burden on that . . . institution [¶] (A) is in furtherance of a compelling governmental interest; and [¶] (B) is the least restrictive means of furthering that compelling governmental interest." (42 U.S.C.A. § 2000cc, subd. (a)(1)(A)-(B), italics added.) "Religious exercise" is defined by RLUIPA as including "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." (42 U.S.C. § 2000cc-5(7)(A).)

RLUIPA's purpose, among other things, is to prevent the government from treating religious organizations in a manner that is unequal to similarly situated entities. (*Ventura County School v. City of San Buenaventura* (C.D.Cal. 2002) 233 F.Supp.2d 1241, 1247.) The Ninth Circuit Court of Appeals in *San Jose Christian College v. Morgan Hill* (9th Cir. 2004) 360 F.3d 1024, concluded that "religious exercise" under RLUIPA was implicated where a college wanted to convert its property from a hospital use to a place for *religious education*. RLUIPA being *implicated*, the ultimate question in that case was whether the defendant city had "substantially burdened" that exercise. (*Id*. at p. 1034.) In *Westchester Day School v. Village of Mamaroneck* (2d Cir. 2007) 504 F.3d 338, the court found that the denial of a permit to a religious school to build new facilities for its students imposed a substantial burden on religious exercise because the existing facilities were inadequate and continuing to teach there was not a legitimate option. (*Id.* at pp. 352-353.) The court also observed, "[w]here the denial of an institution's application to build [on its property] will have minimal impact on the institution's religious exercise, it does not constitute a substantial burden. . . ." (*Id.* at p. 349.)

Here, Yavneh wanted to use its school for *religious education* and so RLUIPA would be implicated. Accordingly, the Zoning Administrator and the CAPC were justified in discussing their concerns about whether the CUP imposed

a substantial burden to Yavneh's exercise of religion. They were likewise correct to carefully modify the CUP's conditions in religion-neutral manner so that the conditions would avoid the possibility of imposing substantial burden on Yavneh's religious exercise, which could elicit a constitutional challenge. By identifying concerns raised by RLUIPA, the CAPC sought to avoid imposing unconstitutional burdens. Toward that end, the CAPC modified the CUP to continue limiting Yavneh's use to a religious school by avoiding religion-specific constraints and employing limitations used with other private-school CUPs. Before the modifications at issue here, the restriction against use of the Yavneh campus on Friday nights and Saturdays was designed to prohibit prayer and other conduct, which is part of religious education at the school. Yet, the record showed that other private schools in the neighborhood and the city were not subject to the same restrictions on Friday night and Saturday uses; they were permitted to have indoor athletic matches for example. Thus, to avoid targeting Yavneh for limitations based on religion, the CAPC sought to employ religion-neutral words to restrict the use to that of a school.

Although RLUIPA was a consideration, the CAPC nonetheless based its decision on evidence in the record of Yavneh's use rather than on a reading or application of RLUIPA. As noted, the CAPC's goal was to limit the activities to those of a *school*, just as Concerned Residents wants. To do that it modified the CUP on evidence that (1) the changes would be consistent with Yavneh's existing use as a school; (2) other private schools have extensive Saturday and evening activities; and (3) the changes would not create adverse neighborhood impacts. The CAPC's modifications of school hours and removal of the identity restrictions made the CUP consistent with the school's educational needs without running afoul of RLUIPA. It is therefore clear, contrary to Concerned Residents' view, that although the CAPC and the Zoning Administrator discussed their concerns under RLUIPA that religion-specific constraints on Friday night and Saturday hours might be unconstitutional, RLUIPA was not "the sole" basis for the CAPC's

decision. The record supports the CAPC's conclusion that Yavneh is a school and not primarily used for religious worship and the modifications employed are consistent with Yavneh's use as a religious school.

Concerned Residents argue that other than making a "passing reference" to RLUIPA, neither the Zoning Administrator nor the CAPC made any *finding* that the restrictions on the hours of use or those in Conditions 7 or 26 that were deleted, imposed a substantial burden on Yavneh's exercise of religion or resulted in unequal treatment. Concerned Residents cannot have it both ways: the CAPC cannot have made passing reference to RLUIPA if, as Concerned Residents insist, the CAPC based its entire decision on RLUIPA. Our review of the record shows that the CAPC's decision was not based solely on RLUIPA, but that the CAPC was understandably concerned about how to fashion the conditions in a religion-neutral manner so as to limit the use to that of a school, while allaying potential negative impacts on the neighborhood, and avoiding the possibility of substantially burdening religious exercise. (See *Craik v. County of Santa Cruz, supra*, 81 Cal.App.4th at pp. 884-885.)

Concerned Residents argue that RLUIPA does not justify CAPC's decision because the Act does not give religious land-users an exemption from zoning procedures such as the requirement of a separate church permit for congregational worship. But, identifying RLUIPA-related concerns is not the same as basing a decision on RLUIPA. The CAPC and the trial court recognized RLUIPA as an issue; the CAPC modified Yavneh's CUP so as not to trigger a RLUIPA challenge.[9]

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9 The question of whether the Zoning Administrator's original decision would have violated RLUIPA is not before us with the result we are not called on to address whether it would have violated RLUIPA.

6. *The CAPC's decision did not violate CEQA*.

"To achieve its objectives of environmental protection, CEQA has a three-tiered structure. [Citations.] First, if a project falls into an exempt category, or ' "it can be seen with certainty that the activity in question will not have a significant effect on the environment" [citation], no further agency evaluation is required.' [Citation.] Second, if there is a possibility the project will have a significant effect on the environment, the agency must undertake an initial threshold study; if that study indicates that the project will not have a significant effect, the agency may issue a negative declaration. Finally, if the project will have a significant effect on the environment, an environmental impact report (EIR) is required. [*Ibid*.]" (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-1186.)

"The CEQA Guidelines [(Cal. Code of Regs., tit. 14, § 15000 et seq.)][10] provide for 33 classes of projects that generally do not have a significant effect on the environment and therefore may be exempted from CEQA review. (Pub. Resources Code, § 21080, subd. (b), [citation].)" (*Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles, supra,*161 Cal.App.4th at p. 1186, fn. omitted.) When a project is exempt, " 'it is not subject to CEQA requirements and "may be implemented without any CEQA compliance whatsoever." ' [Citations.]" (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist*. (2006) 139 Cal.App.4th 1356, 1386.) That is, "CEQA does not apply to exemption decisions. By definition, a 'project falling within . . . a categorical exemption is not subject to CEQA.' [Citation.] For that reason, compliance with the act is not required. . . . 'Once this determination of threshold exemption is made, . . . none of the CEQA requirements or procedures apply.' [Citation.]" (*Ibid.*)

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[10] All references to the CEQA regulations (Cal. Code Regs., tit. 14, § 15000 et seq.) are to the CEQA Guidelines.

Here, the Zoning Administrator found in 2004 when she previously modified Conditions 7 and 26, that the changes fell within the Class 1 exemption from CEQA for a conditional, nonsignificant change of use in an existing facility. In 2007, the CAPC adopted the Zoning Administrator's exemption determination when addressing the modifications to Conditions 7 and 26 at issue here. The trial court found that the CUP modifications fell within three categorical exemptions under the CEQA's regulations: Class 1, Class 3, and Class 14.

Concerned Residents contend that the CAPC and the trial court erred in determining that the modifications the CAPC made in 2007 fell within a categorical exemption. Their contention is based on their belief that allowing Yavneh to offer worship services changes the use of the property and constitutes a project under CEQA triggering CEQA analysis. (Pub. Resources Code, § 21080, subd. (a).) As such, they argue, the CAPC "could not lawfully invoke a categorical exemption [without conducting] an initial *threshold* study of the environmental effects of a house of worship at Yavneh" and undertaking the required analysis. (Italics added.)

An agency's determination that a project qualifies for a statutory or categorical exemption from CEQA must be supported by substantial evidence in the record. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist*., *supra*, 139 Cal.App.4th at p. 1386, citing CEQA Guidelines, § 15061, subd. (a); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles, supra,* 161 Cal.App.4th at p. 1186.) On review of an agency's exemption decision, our task is to " 'determine whether, *as a matter of law*, the [activity meets] the definition of a categorically exempt project.' [Citation.]" (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist*., *supra*, at pp. 1386-1387.) That requires a de novo standard of review. "But in undertaking our independent analysis, we bear in mind the 'highly deferential' review standard that applies to the agency's factual determinations. [Citation.]

. . . '[T]he factual bases of quasi-legislative administrative decisions are entitled to the same deference as the factual determinations of trial courts . . . .' [Citation.]" (*Id.* at p. 1387.)

Class 1 exempts projects from CEQA review when the "permitting . . . or minor alteration of existing public or private . . . facilities . . . involv[es] negligible or no expansion of use beyond that existing at the time of the lead agency's [CAPC's] determination. . . . The key consideration is whether the project involves negligible or no expansion of an existing use." (CEQA Guidelines, § 15301.)

Turning to the evidence supporting the CAPC's exemption determination, it shows that the CAPC's modifications to the CUP here were very small. Concerned Residents' contention to the contrary notwithstanding, as analyzed, the modifications did not increase, change, or modify Yavneh's use as a school. Although the hours were expanded slightly, the number of participants allowed to use the premises during those expanded hours contracted to one-half the number of students and faculty at the school during weekday hours, and considerably less than the numbers that would have been allowed to attend had Yavneh's requested modifications been granted. All of Concerned Residents' challenges to the exemption determination here spring from their *assumption* that Yavneh is using the property as a house of worship. But, as demonstrated, the evidence supports the CAPC's conclusion that Yavneh is using the property as a school, not as a religious institution under the LAMC. In fact, the challenged modifications were designed to assure that the use remains that of a school. Therefore, as a matter of law, the record contains substantial evidence supporting the CAPC's determination that the modifications to Yavneh's CUP qualify for a Class 1 exemption and the CAPC was not required to proceed with any of the CEQA requirements or procedures. The CAPC did not abuse its discretion and the record supports the trial court's ruling.

Concerned Residents' contend that the CAPC was obligated to establish the inapplicability of exceptions to the exemptions. But, "[a]n agency's determination that the project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the Guidelines is applicable." (*Save Our Carmel River v. Monterey Peninsula Water Management Dist*. (2006) 141 Cal.App.4th 677, 694.) It is the party challenging the exemption finding who bears the burden of producing evidence showing that one of the exceptions applies to take the project out of the exempt category. (*Ibid.*) Concerned Residents did not present any evidence or otherwise assert that an exception to the categorical exemption applied to the CUP modification, or indeed object to the Zoning Administrator's or the CAPC's exemption determination. Therefore, they may not be heard to argue on appeal that the CAPC failed to determine that no exception to the exception applied.

In fact, Concerned Residents' failure to raise its objection to the exemption finding before the CAPC is fatal to their contention here. Public Resources Code section 21177, subdivision (a) forbids the bringing of any action under "Section 21167 unless *the alleged grounds for noncompliance with this division were presented to the public agency orally or in writing* by any person . . . before the issuance of the notice of determination." (Italics added.) "[G]eneralized environmental comments at public hearings [do not] satisfy the exhaustion doctrine." (*Coalition for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197; see also Gov. Code, § 65009, subd. (b)(1)[11].) The sole statement made during the administrative proceeding consisted of the following

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[11] Government Code section 65009, subdivision (b)(1), which reads: "In an action or proceeding to attack, review, set aside, void, or annul a finding, determination, or decision of a public agency made pursuant to this title at a properly noticed public hearing, the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency prior to, or at, the public hearing, except where the court finds [factors that are not relevant here]."

statement Yavneh's opponents made to the City Council: "The fact remains that *if* Yavneh desires to create a place of worship, as opposed to an educational institution, it must apply for that permit and submit to the appropriate CEQA review with respect to the expanded uses." (Italics added.) That statement did not raise concerns about the CAPC's determination that the CUP modifications are categorically exempt or that the exemption determination was defective. It merely observes, *if* there were a change in use, that the change would constitute a project requiring CEQA review. As noted repeatedly here, there was no change in use from a school.

Nor were Concerned Residents denied due process on the ground that the notice of the CAPC's hearing did not mention CEQA. The exception determination was identical to the one the Zoning Administrator made, and appellants never objected to the Zoning Administrator's determination.

For the foregoing reasons, the trial court properly denied Concerned Residents' petition for writ of mandate.

V.

DISPOSITION

The judgment is affirmed. Respondents to recover their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.